

No. 1-12-3779

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BEVERLY PEDRAZA,)	Appeal from the Circuit
)	Court of Cook County.
Petitioner-Appellee,)	
)	
v.)	No. 97 D 8823
)	
EDGAR PEDRAZA,)	Honorable
)	Pamela Loza,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Justices Cunningham and Delort concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not abuse its discretion in awarding the petitioner attorney fees under section 508(b) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/508(b) (West 2012)); therefore, the judgment of the circuit court was affirmed.

¶ 2 The respondent, Edgar Pedraza, appeals from the circuit court's order awarding the petitioner, Beverly Pedraza, \$39,112.75 in attorney fees under section 508(b) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/508(d) (West 2012)). On appeal, the respondent argues that the circuit court erred by awarding unreasonable fees. We affirm the judgment of the circuit court.

¶ 3 The parties married on June 22, 1985, and had two daughters, born in 1988 and 1991. The petitioner filed for dissolution of the marriage in 1997, and a judgment for dissolution of marriage was entered on July 2, 1998. As part of that judgment, the respondent was, in relevant part, ordered to: pay one-half of the children's private school expenses, childcare costs, medical and dental insurance premiums, and medical and dental expenses; provide the petitioner with a copy of his federal and state personal and corporate income tax returns each year; and, obtain and maintain a term life insurance policy with the children named as beneficiaries, providing proof of such policy's existence upon the petitioner's reasonable request.

¶ 4 After the 1998 judgment was entered and continuing through 2010, the parties filed numerous postdissolution pleadings. Relevant to this appeal, on June 10, 2009, the petitioner filed for a rule to show cause, alleging that the respondent failed to tender his tax returns, failed to pay one-half of the children's health insurance premiums, medical expenses, and educational expenses, and failed to obtain and maintain term life insurance. Additionally, the petitioner sought attorney fees under section 508 of the Act. On August 31, 2011, following numerous delays and the filing of various motions, the parties entered into a settlement agreement which resolved the issues raised in the petition with the exception of the matter of attorney fees.

¶ 5 On September 27, 2011, the petitioner sought attorney fees under section 508(b) of the Act, stating that she retained counsel on May 4, 2009, to compel the respondent to comply with the terms of the 1998 judgment. She sought \$54,916.06 in attorney fees for expenses incurred between May 4, 2009, and September 27, 2011, plus an anticipated \$4,000 for the costs associated with hearing the fee petition.

¶ 6 A hearing was held on the fee petition over several dates between June and November of 2012. The petitioner testified that she sought legal counsel in May 2009 in order to compel the respondent to comply with the various terms of the dissolution judgment. She testified that, over the course of several years, she asked the respondent to provide his tax documents, proof of life insurance, and to pay one-half of the children's medical expenses, insurance premiums, and educational expenses. She stated that he never complied with her numerous requests. The petitioner further testified that the respondent ignored several court orders requiring him to comply with her requests.

¶ 7 Counsel for petitioner, Michelle Gideon, testified that she was retained by the petitioner to file postdissolution proceedings, including a petition for rule to show cause. Gideon stated that the respondent, in response to the petition, filed numerous motions and discovery requests, requiring her to respond and appear in court. She testified that, because of the respondent's lack of cooperation, changes of attorney, and requests for continuances, the matter required 25 court appearances over the course of three years. Gideon stated that she charged the petitioner \$275 per hour and charged in minimum increments of one-quarter hours. She testified that she charged for the travel time it took her to return to her office from court appearances.

¶ 8 On cross-examination, Gideon testified that she charged the petitioner for ministerial activities, such as waiting to file documents in the court clerk's office and preparing correspondence and legal documents. She explained that her firm did not employ any paralegals or legal secretaries who could perform such tasks. She admitted that she charged for parking costs, tolls, and mileage for court appearances in Chicago. The court stated that it would subtract such charges from the fees

awarded, allowing only the hourly charges for travel time.

¶ 9 The respondent testified that he tendered proof of the life insurance policy to the petitioner's counsel several times in 2010. He testified that the policy was taken out in November 2009 through Rigit Insurance and that, before then, he had life insurance in effect as of January 2003 through another carrier. According to the respondent, the petitioner was aware of the policy's existence as he provided proof to her. He also testified that he sent his tax returns to the petitioner upon her request and that he did not pay certain expenses for the children because he never received any invoices.

¶ 10 On cross-examination, the respondent identified several written requests from the petitioner for him to pay expenses and provide documentation per the dissolution judgment. He also admitted that the court entered orders on August 4, 2010, and October 18, 2010, requiring him to provide the petitioner with his tax returns from 2004 through 2009. The respondent further identified the March 9, 2010, life insurance policy that he sent to the petitioner's counsel and a document showing that the policy was originally issued on November 28, 2009. No evidence of another insurance policy was contained in the record.

¶ 11 On November 30, 2012, the circuit court awarded the petitioner \$39,112.75 in attorney fees. The court found that the respondent failed to comply with the terms of the dissolution judgment without compelling cause or justification in that he failed to pay one-half of the children's medical insurance from 2004 to date, failed to reimburse the petitioner for one-half of the children's medical expenses, failed to supply the petitioner with his annual tax returns, and failed to provide the petitioner with proof that he obtained and maintained life insurance with the children named as

beneficiaries. The court specifically noted that the respondent did not obtain the requisite life insurance until the petitioner filed her 2009 petition for rule to show cause. The court further determined that the petitioner would not have incurred attorney fees had the respondent complied with the terms of the original dissolution judgment and that the fees charged by her attorney were reasonable and fair given the time and complexity of the case.

¶ 12 On appeal, the respondent argues that the circuit court erred by finding that his lack of compliance was without cause or justification and by awarding unreasonable attorney fees. We disagree.

¶ 13 Section 508(b), in relevant part, provides:

"In every proceeding for the enforcement of an order or judgment when the court finds that the failure to comply with the order or judgment was without compelling cause or justification, the court shall order the party against whom the proceeding is brought to pay promptly the costs and reasonable attorney's fees of the prevailing party." 750 ILCS 5/508(b) (West 2012).

¶ 14 Section 508(b) is a mandatory provision by which the trial court must award attorney fees if it determines that the failure to comply with a court order or judgment was without cause or justification. *In re Marriage of Michaelson*, 359 Ill. App. 3d 706, 715, 834 N.E.2d 539, 547 (2005). A court may deny attorney fees and costs where the failure to comply was justified, or the failure was not willful and wanton. *Id.* However, "[w]here a trial court finds a party's failure to pay was without cause or justification, the award of reasonable attorneys' fees and costs is mandatory." *Id.* at 715-16. An award of attorney fees will not be overturned in the absence of a clear abuse of discretion by the

trial court. *Id.* "A clear abuse of discretion occurs 'when the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.'" *Blum v. Koster*, 235 Ill. 2d 21, 36, 919 N.E.2d 333, 342 (2009) (quoting *People v. Hall*, 195 Ill.2d 1, 20, 743 N.E.2d 126 (2000)).

¶ 15 In this case, the circuit court determined that the respondent's failure to comply with the terms of the 1998 dissolution judgment was without compelling cause or justification. The court noted that the respondent failed to pay one-half of the children's medical insurance from 2004 to the emancipation of the children, failed to pay one-half of the children's various medical expenses, failed to supply the petitioner with his tax returns for several years, and failed to obtain the requisite life insurance until the petitioner filed her 2009 action. While the respondent testified that he failed to pay expenses because the petitioner never supplied him with invoices and that he submitted the other documents, the record does not support his claims. There is no evidence that the respondent supplied the tax returns, paid the expenses, or obtained the requisite life insurance policy. Further, the record does not indicate any compelling cause or justification for the respondent's failure to comply with these requirements of the 1998 judgment. Thus, we do not agree with the respondent that the circuit court abused its discretion in determining that his failure to comply with the terms of the dissolution judgment was without cause or justification.

¶ 16 We also disagree with the respondent's claim that the attorney fees awarded were unreasonable because counsel charged the petitioner for travel time and ministerial tasks. An appropriate attorney fee consists of reasonable charges for reasonable services. *In re Marriage of Patel & Sines-Patel*, 2013 IL App (1st) 112571, ¶ 103. In determining whether the fees charged are

reasonable, the trial court considers not only the number of hours the attorney spent on the case but also: (1) the skill and standing of the attorneys; (2) the difficulty of the issues; (3) the amount and importance of the subject matter in the field of family law; (4) the degree of responsibility involved in the management of the case; (5) the usual and customary charges in the community; and (6) the benefits to the client. *Id.* The fees should compensate for the services rendered and be fair to both the attorney seeking them and the party required to pay them. *Id.* "The most important of the factors is the amount of time spent on the case, but the time charged for must be necessary to handle the matter involved." *Id.*, ¶ 104. The burden of proof is on the attorney seeking the fees to establish the value of her services. *Id.*

¶ 17 In this case, the trial court determined that the fees awarded were reasonable after it conducted an extensive hearing on the necessity and reasonableness of the fees charged to the petitioner for her representation in the postdissolution proceedings. The record demonstrates that the fees covered three years of representation and that the extensive duration of the proceedings was caused in large part to the respondent's delays, lack of cooperation, and filing of numerous discovery requests. Gideon testified at great length regarding her itemized charges, explaining each charge in detail and its necessity to the case. While the respondent disputes the reasonableness of charging a client an attorney's hourly rate, instead of that of a paralegal, for travel time and ministerial tasks, the court, using its own experience, determined otherwise. See *id.*, ¶ 110 (court may use its own experience to determine reasonableness of the fee amount requested). The respondent does not point to any legal authority supporting his argument that an attorney's fee for performing a task that may be performed by a paralegal or office assistant renders the charge unreasonable, especially where the

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firm did not employ such personnel. Further, the record indicates that the court disallowed some of the charges that it considered unreasonable. Specifically, the court found that attorney Gideon could bill for travel time between her suburban office to the Daly Center, but she could not also charge for mileage, parking and tolls for the same trips; the court also allowed only \$39,112.75 of the \$54,916.06 requested in the fee petition. Under these facts, we cannot agree that the circuit court abused its discretion in its award of attorney fees.

¶ 18 Based on the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 19 Affirmed.